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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**
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10 JAMES SOLER,

11 Plaintiff,

12 v.

13 COUNTY OF SAN DIEGO, et al.,

14 Defendants.
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Case No.: 14cv2470-MMA (RBB)

**ORDER DENYING DEFENDANTS’
MOTION TO STAY;**

[Doc. No. 190]

**DENYING DEFENDANTS WILKINS
AND HOBBS’ MOTION TO DISMISS**

[Doc. No. 189]

19 Plaintiff James Soler brings this civil rights action pursuant to Title 42, United
20 States Code, section 1983, and California state law, against the County of San Diego, and
21 various individually named defendants. Defendants Lisa Wilkins and Ray Hobbs move
22 to stay the action. *See* Doc. No. 190. Defendants Ernesto Banuelos and County of San
23 Diego (“County Defendants”) join the motion. *See* Doc. No. 191. In addition,
24 Defendants Wilkins and Hobbs move to dismiss Plaintiff’s claims against them. *See*
25 Doc. No. 189. Plaintiff filed responses opposing both motions, to which Defendants
26 replied. *See* Doc. Nos. 192-195. For the reasons set forth below, the Court **DENIES**
27 Defendants’ motion to stay and **DENIES** Defendants Wilkins and Hobbs’ motion to
28 dismiss.

1 **MOTION TO STAY**

2 Defendants move to stay this action pending resolution by the United States
3 Supreme Court of County Defendants' petition for a writ of certiorari. This is the only
4 ground asserted in support of the requested stay. On November 18, 2019, the Supreme
5 Court denied the petition. *See* S.Ct. Case No. 19-289. Accordingly, the Court **DENIES**
6 Defendants' motion. The Court declines to rule on the parties' competing case
7 management proposals. The Court has referred case management matters to the assigned
8 magistrate judge.

9 **MOTION TO DISMISS**

10 Defendants Wilkins and Hobbs move to dismiss Plaintiff's claims pursuant to
11 Federal Rule of Civil Procedure 12(b)(6), or in the alternative, on various immunity
12 grounds. Plaintiff opposes the motion, arguing, *inter alia*, that Defendants are precluded
13 from asserting certain arguments due to parallel litigation in the Eastern District of
14 Arkansas.

15 A. Background¹

16 This action arises out of events involving a case of mistaken identity and Plaintiff's
17 arrest for a thirty-year old crime he did not commit. At the time in question, Defendant
18 Lisa Wilkins was an attorney employed by the Arkansas Department of Corrections, and
19 Defendant Ray Hobbs was the Director of the Arkansas Department of Corrections. *See*
20 Third Amended Complaint, Doc. No. 60 ¶ 16. Wilkins prepared an affidavit for Hobbs'
21 signature to support a judicial finding of probable cause to conclude that Plaintiff was a
22 wanted escapee from Arkansas prison, Steven Dishman. *Id.* The affidavit stated, "I have
23 new and reasonably believe it to be accurate information as to [Mr. Dishman's] current
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26 ¹ Because this matter comes before the Court on a motion to dismiss pursuant to Federal Rule of Civil
27 Procedure 12(b)(6), the Court must accept as true all material allegations in Plaintiff's operative
28 complaint and must also construe the complaint, and all reasonable inferences drawn therefrom, in the
light most favorable to Plaintiff. *See Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir. 2002). Based on
the parties' and the Court's familiarity with Plaintiff's factual allegations, the Court sets forth only a
brief summary herein.

1 residence at [Mr. Soler's street address], Alpine, California, and is living under the alias
2 of James DeWolfe Soler." *Id.* In turn, Hobbs presented the affidavit to an Arkansas
3 judge, who issued an Affidavit of Probable Cause to support the extradition of "Steven
4 Dishman, a/k/a James DeWolfe Soler" from California to Arkansas. *Id.* These events
5 culminated in Plaintiff's arrest and detention by San Diego County Defendants, and
6 ultimately this action ensued.

7 The Court previously held that it lacked personal jurisdiction over Defendants
8 Wilkins and Hobbs. *See* Doc. Nos. 125, 141. Plaintiff appealed to the United States
9 Court of Appeals for the Ninth Circuit, *see* Doc. No. 162, and filed suit against
10 Defendants Wilkins and Hobbs in the Eastern District of Arkansas. *See* E.D. AR. Case
11 No. 4:17-cv-00018-BRW. The Arkansas court denied Defendants' motion to dismiss
12 Plaintiff's claims, and later stayed the action pending resolution of Plaintiff's appeal. *See*
13 *id.*, Doc. Nos. 18, 26. Thereafter, the Ninth Circuit reversed this Court's determination
14 that it lacked personal jurisdiction over Defendants Wilkins and Hobbs, and remanded
15 the action accordingly. *See Soler v. Cty. of San Diego*, 762 F. App'x 383 (9th Cir. 2019).

16 B. Legal Standard

17 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the
18 sufficiency of the complaint. *See Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). A
19 plaintiff must plead "enough facts to state a claim to relief that is plausible on its face."
20 Fed. R. Civ. P. 12(b)(6); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The
21 plausibility standard thus demands more than a formulaic recitation of the elements of a
22 cause of action, or naked assertions devoid of further factual enhancement. *See Ashcroft*
23 *v. Iqbal*, 556 U.S. 662, 678 (2009). Instead, the complaint "must contain allegations of
24 underlying facts sufficient to give fair notice and to enable the opposing party to defend
25 itself effectively." *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). In reviewing a
26 motion to dismiss under Rule 12(b)(6), courts must accept as true all material allegations
27 in the complaint and must construe the complaint in the light most favorable to the
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1 plaintiff. *See Cholla Ready Mix, Inc. v. Civish*, 382 F.3d 969, 973 (9th Cir. 2004) (citing
2 *Karam v. City of Burbank*, 352 F.3d 1188, 1192 (9th Cir. 2003)).

3 C. Plaintiff's Federal Claims

4 As a threshold matter, Plaintiff argues that Defendants Wilkins and Hobbs are
5 collaterally estopped from relitigating certain issues raised in their pending motion to
6 dismiss with respect to Plaintiff's federal civil rights claims. Specifically, Plaintiff argues
7 that the court in the Eastern District of Arkansas previously considered and rejected
8 Defendants' motion to dismiss Plaintiff's federal claims, as well as Defendants'
9 assertions of qualified immunity from suit over those claims.

10 "Res judicata encompasses two subsidiary doctrines, claim preclusion and issue
11 preclusion." *Americana Fabrics, Inc. v. L & L Textiles, Inc.*, 754 F.2d 1524, 1529 (9th
12 Cir. 1985). "[I]ssue preclusion, or collateral estoppel, bars relitigation, even in an action
13 on a different claim, of all 'issues of fact or law that were actually litigated and
14 necessarily decided' in the prior proceeding." *Id.* (quoting *Segal v. American Tel. & Tel.*
15 *Co.*, 606 F.2d 842, 845 (9th Cir. 1979)). As such, "[w]hen the same claim or issue is
16 litigated in two courts, the second court to reach judgment should give res judicata effect
17 to the judgment of the first, regardless of the order in which the two actions were filed."
18 *Americana Fabrics, Inc.*, 754 F.2d at 1529.

19 "Under both California and federal law, collateral estoppel applies only where it is
20 established that: '(1) the issue necessarily decided at the previous proceeding is identical
21 to the one which is sought to be relitigated; (2) the first proceeding ended with a final
22 judgment on the merits; and (3) the party against whom collateral estoppel is asserted was
23 a party or in privity with a party at the first proceeding.'" *Hydranautics v. FilmTec*
24 *Corp.*, 204 F.3d 880, 885 (9th Cir. 2000) (quoting *Younan v. Caruso*, 51 Cal. App. 4th
25 401, 406-07 (1996), and citing *Trevino v. Gates*, 99 F.3d 911, 923 (1996)). All that is
26 needed to satisfy the second criterion is that the previous court's judgment on the
27 particular issue is final and conclusive. *See Luben Indus., Inc. v. United States*, 707 F.2d
28 1037, 1040 (9th Cir. 1983).

1 After reviewing the record of the Arkansas action, the Court finds that the factors
2 set forth above are met with respect to the following issues in this case: (1) whether
3 Plaintiff states a plausible Fourth Amendment claim for wrongful arrest against
4 Defendants Wilkins and Hobbs; (2) whether Plaintiff states a plausible Fourteenth
5 Amendment claim for wrongful detention against Defendants Wilkins and Hobbs; (3)
6 whether Defendant Wilkins is entitled at this stage of the proceedings to dismissal of
7 Plaintiff's claims against her based on prosecutorial immunity; and (4) whether
8 Defendants Wilkins and Hobbs are entitled at this stage of the proceedings to dismissal of
9 Plaintiff's federal claims against them based on qualified immunity. Those issues were
10 raised before, and conclusively rejected by, the district court in Arkansas, and therefore
11 issue preclusion bars their re-litigation in this Court.² *See Stoll v. Gottlieb*, 305 U.S. 165,
12 172 (1938). Accordingly, Plaintiff's federal civil rights claims are not subject to
13 dismissal, nor are Defendants Wilkins and Hobbs entitled to qualified immunity from suit
14 at this time.

15 D. Plaintiff's Additional Claims

16 Defendants Wilkins and Hobbs also move to dismiss Plaintiff's California Bane
17 Act claim, and common law false imprisonment and negligence claims. Plaintiff's claim
18 for wrongful arrest, detention, and imprisonment brought pursuant to California's Bane
19 Act, Cal. Civ. Code § 52.1, is adequately pleaded. In so holding, the Court relies in
20 substantial part on the reasoning set forth in its March 19, 2015 "Order Granting In
21 Part and Denying In Part [County] Defendants' Motion to Dismiss." *See* Doc. No. 16 at
22 5-7. Likewise, the Court finds Plaintiff's false imprisonment, negligence, and punitive
23 damages claims adequately pleaded.

24 Defendants Wilkins and Hobbs assert that they are entitled to various statutory
25 immunities from suit provided by California state law, including California Government
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28 ² The court clearly, albeit summarily, held: "Plaintiff's allegations are sufficient to state claims against Defendants."

1 Code §§ 820.2, 820.8, and 821.6.³ “[P]rosecutorial’ immunity under Cal. Gov. Code §
2 821.6 does not apply because it is limited to malicious-prosecution claims.” *Sharp v. Cty.*
3 *of Orange*, 871 F.3d 901, 920 (9th Cir. 2017). Immunity under section 820.2 “‘is
4 reserved for those basic policy decisions [which have] ... been [expressly] committed to
5 coordinate branches of government, and as to which judicial interference would thus be
6 unseemly.’” *Liberal v. Estrada*, 632 F.3d 1064, 1084 (9th Cir. 2011) (quoting *Gillan v.*
7 *City of San Marino*, 147 Cal. App. 4th 1033, 1051 (2007)) (quotation marks omitted).
8 Defendants Wilkins and Hobbs have not met their burden of showing that their actions
9 qualify. *See AE v. Cty. of Tulare*, 666 F.3d 631, 639 (9th Cir. 2012) (“[G]overnment
10 defendants have the burden of establishing that they are entitled to immunity for an actual
11 policy decision made by an employee.”). Cal. Gov. Code § 820.8 provides respondeat
12 superior immunity from suit based on the actions of others, however, Plaintiff’s state law
13 claims against Defendants Wilkins and Hobbs arise out of these defendants’ own actions.
14 “[B]y its plain language § 820.8 does not ‘exonerate[] a public employee from liability
15 for injury proximately caused by his own negligent or wrongful act or omission.’ This is
16 true even where other persons are the direct cause of the injury, if their actions are a
17 clearly foreseeable consequence of the public employee’s act or omission.” *Doe v.*
18 *Beard*, 63 F. Supp. 3d 1159, 1169 n.8 (C.D. Cal. 2014) (quoting Cal. Gov. Code § 820.8).

19 In sum, Plaintiff’s additional claims are not subject to dismissal at this stage of the
20 proceedings, and Defendants Wilkins and Hobbs are not entitled to statutory immunity
21 from suit.

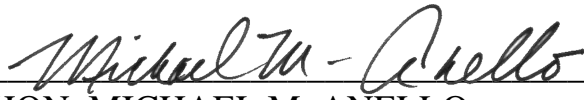
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24 ³ Cal. Gov. Code § 820.2 provides: “[A] public employee is not liable for an injury resulting from his act
25 or omission where the act or omission was the result of the exercise of the discretion vested in him,
26 whether or not such discretion be abused.” Cal. Gov. Code § 820.8 provides: “Except as otherwise
27 provided by statute, a public employee is not liable for an injury caused by the act or omission of
28 another person. Nothing in this section exonerates a public employee from liability for injury
proximately caused by his own negligent or wrongful act or omission.” Cal. Gov. Code § 821.6
provides: “A public employee is not liable for injury caused by his instituting or prosecuting any judicial
or administrative proceeding within the scope of his employment, even if he acts maliciously and
without probable cause.”

1 **CONCLUSION**

2 Based on the foregoing, the Court **DENIES** Defendants' motion to stay this action
3 and **DENIES** Defendants Wilkins and Hobbs' motion to dismiss in its entirety.

4 **IT IS SO ORDERED.**

5 DATE: December 4, 2019

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8 HON. MICHAEL M. ANELLO
9 United States District Judge
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